

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

GEORGE DEWBERRY,	:	
Petitioner,	:	Case No. 3:21-cv-158
v.	:	
WARDEN, LONDON	:	JUDGE WALTER H. RICE
CORRECTIONAL INSTITUTION,	:	
Respondent.	:	

DECISION AND ENTRY ADOPTING UNITED STATES MAGISTRATE JUDGE'S REPORT AND RECOMMENDATIONS (DOC. # 14) AND SUPPLEMENTAL REPORT AND RECOMMENDATIONS (DOC. #17) OVERRULING PETITIONER'S OBJECTIONS THERETO (DOCS. ##15, 18); DISMISSING PETITION FOR WRIT OF HABEAS CORPUS (DOC. #1) WITH PREJUDICE; DENYING CERTIFICATE OF APPEALABILITY AND LEAVE TO APPEAL *IN FORMA PAUPERIS*; JUDGMENT TO ENTER IN FAVOR OF RESPONDENT AND AGAINST PETITIONER; TERMINATION ENTRY

On June 9, 2021, Petitioner filed his Petition for Writ of Habeas Corpus with this Court, requesting relief on two grounds. Doc. #1-2. Respondent filed its Return of Writ on November 5, 2021. Doc. #9. Petitioner filed his subsequent Traverse on December 21, 2021. Doc. #13.

On December 28, 2021, United States Magistrate Judge Michael R. Merz issued a Report and Recommendations, Doc. #14, recommending that the Court dismiss Petitioner's Petition with prejudice. Petitioner, in response, filed Objections to Magistrate Merz's Recommendations on January 11, 2022. Doc.

#15. After Petitioner filed Objections, this Court recommitted the matter to Magistrate Judge Merz, requesting a supplemental report analyzing the Objections and making recommendations based on that analysis. Doc. #16. On January 13, 2022, Magistrate Judge Merz issued a Supplemental Report and Recommendations, again recommending that Petitioner's Petition be dismissed with prejudice. Doc. #17. Petitioner again filed Objections to Judge Merz's Recommendations, essentially reiterating arguments that were previously raised in his initial objections. Doc. #18.

Based on the reasoning and citations of authority set forth by United States Magistrate Judge Michael R. Merz in his December 28, 2021, Report and Recommendations, Doc. #14, and his January 19, 2022, Supplemental Report and Recommendations, as well as upon a thorough *de novo* review of this Court's file and the applicable law, the Court ADOPTS said judicial filing in its entirety and DISMISSES the Petition for Writ of Habeas Corpus, Doc. #1, WITH PREJUDICE.

Petitioner's Objections to the Report and Recommendations, Docs. ##15 and 17, are OVERRULED as meritless. Magistrate Judge Merz has thoroughly explained why Petitioner is not entitled to habeas corpus relief on his claim concerning the alleged violation of his Compulsory and Due Process rights when he was not permitted to call a material and favorable witness during a suppression hearing. Doc. #14, PageID#1457-61; Doc. #17, PageID##1493-94. Magistrate Judge Merz has also explained why Petitioner is not entitled to habeas corpus relief on his claim concerning an alleged violation of his Due Process


rights by use of an unduly suggestive procedure concerning a pretrial identification. Doc. #14, PageID##1461-67; Doc. #17, PageID##1489-93. Although Petitioner may disagree with the recommendations of Magistrate Judge Merz, nothing in his Objections persuades this Court that Magistrate Judge Merz erred in recommending that Petitioner's Petition be dismissed.

Given that Petitioner has not made a substantial showing of the denial of a constitutional right and, further, that the Court's decision herein would not be debatable among reasonable jurists, and because any appeal from this Court's decision would be *objectively* frivolous, Petitioner is denied a certificate of appealability, and is denied leave to appeal *in forma pauperis*.

Judgment will be entered in favor of Respondent and against Petitioner.

The captioned case is hereby ordered terminated upon the docket records of the United States District Court for the Southern District of Ohio, Western Division, at Dayton.

Date: March 18, 2022



WALTER H. RICE
UNITED STATES DISTRICT JUDGE